

for the exception under section 6231(a)(1)(B) and this paragraph (a) are met with respect to that other taxable year.

(b) *Election to have subchapter C of chapter 63 apply*—(1) *In general.* Any partnership that meets the requirements set forth in section 6231(a)(1)(B) and paragraph (a) of this section (relating to the exception for small partnerships) may elect under paragraph (b)(2) of this section to have the provisions of subchapter C of chapter 63 of the Internal Revenue Code apply with respect to that partnership.

(2) *Method of election.* A partnership shall make the election described in paragraph (b)(1) of this section by attaching a statement to the partnership return for the first taxable year for which the election is to be effective. The statement shall be identified as an election under section 6231(a)(1)(B)(ii), shall be signed by all persons who were partners of that partnership at any time during the partnership taxable year to which the return relates, and shall be filed at the time (determined with regard to any extension of time for filing) and place prescribed for filing the partnership return. However, for any partnership taxable year for which the due date of the return (determined without regard to extensions) is before January 2, 2002, the partnership may file the statement described in the preceding sentence on or before the date which is one year before the date specified in section 6229(a) for the expiration of the period of limitations with respect to that partnership (determined with regard to extensions of that period under section 6229(b)).

(3) *Years covered by election.* The election shall be effective for the partnership taxable year to which the return relates and all subsequent partnership taxable years unless revoked with the consent of the Commissioner.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(1)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50556, Oct. 4, 2001]

§ 301.6231(a)(2)-1 Persons whose tax liability is determined indirectly by partnership items.

(a) *Spouse filing joint return with individual holding a separate interest*—(1) *In general.* Except as otherwise provided in this paragraph (a), a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as a partner for purposes of subchapter C of chapter 63 of the Internal Revenue Code. Thus, the spouse who files a joint return with a partner will be permitted to participate in administrative and judicial proceedings.

(2) *Counting rules.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall not be counted as a partner for purposes of applying section 6223(b) (relating to special rules for partnerships with more than 100 partners) and section 6231(a)(1)(B) (relating to the exception for small partnerships).

(3) *Notice rules*—(i) *In general.* Except as provided in paragraph (a)(3)(ii) of this section, for purposes of subchapter C of chapter 63 of the Internal Revenue Code, a spouse who files a joint return with an individual holding a separate interest in the partnership shall be treated as receiving any notice received by the individual holding the separate interest.

(ii) *Spouse identified on partnership return or by statement.* Paragraph (a)(3)(i) of this section shall not apply to a spouse who files a joint return with an individual holding a separate interest in the partnership if that spouse—

(A) Is identified on the partnership return; or

(B) Is identified as a partner entitled to notice as provided in § 301.6223(c)-1(b).

(4) *Conversion of partnership items*—(i) *Individual holding a separate interest.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall cease to be treated as a partner in the partnership under paragraph (a)(1) of this section upon the conversion of the partnership items of the individual holding the separate interest in the partnership to nonpartnership items pursuant to section 6231(b). If each spouse holds a separate interest in the partnership, the

previous sentence shall be applied separately with respect to each partnership interest.

(ii) *Spouse who files a joint return with an individual holding a separate interest in the partnership.* A spouse who files a joint return with an individual holding a separate interest in the partnership shall cease to be treated as a partner in the partnership under paragraph (a)(1) of this section upon the occurrence of an event that would convert the partnership items of the spouse to nonpartnership items if the spouse were the owner of a separate interest.

(iii) *Examples.* The following examples illustrate the application of paragraph (a)(4) of this section:

Example 1. Husband owns a separate interest in ABC partnership and files a joint return with Wife. Husband files for bankruptcy. Pursuant to § 301.6231(c)-7, upon filing for bankruptcy, the partnership items of the debtor convert to nonpartnership items. Thus, Husband's partnership items converted to nonpartnership items upon the filing of Husband's bankruptcy petition. Pursuant to paragraph (a)(4)(i) of this section, Wife is no longer treated as a partner of ABC partnership as of the date the partnership items of Husband converted to nonpartnership items.

Example 2. Wife owns a separate interest in XYZ partnership and files a joint return with Husband. Husband files for bankruptcy. Because the filing of the bankruptcy petition by Husband is an event that would convert Husband's partnership items to nonpartnership items if Husband were the owner of a separate interest, Husband shall no longer be treated as a partner as of the filing of the bankruptcy petition. Pursuant to paragraph (a)(4)(ii) of this section, the partnership items of Wife are not affected by Husband's bankruptcy.

(5) *Cross-reference.* See § 301.6231(a)(12)-1 for special rules relating to spouses holding a joint interest in a partnership.

(b) *Shareholder of C corporation.* A shareholder of a C corporation (as defined in section 1361(a)(2)) is not a partner in a partnership merely because the C corporation is a partner in that partnership.

(c) *Effective date.* This section is applicable to partnership taxable years beginning on or after October 4, 2001. For years beginning prior to October 4, 2001, see § 301.6231(a)(2)-1T contained in 26 CFR part 1, revised April 1, 2001.

[T.D. 8965, 66 FR 50557, Oct. 4, 2001]

§ 301.6231(a)(3)-1 Partnership items.

(a) *In general.* For purposes of subtitle F of the Internal Revenue Code of 1954, the following items which are required to be taken into account for the taxable year of a partnership under subtitle A of the Code are more appropriately determined at the partnership level than at the partner level and, therefore, are partnership items:

(1) The partnership aggregate and each partner's share of each of the following:

(i) Items of income, gain loss, deduction, or credit of the partnership;

(ii) Expenditures by the partnership not deductible in computing its taxable income (for example, charitable contributions);

(iii) Items of the partnership which may be tax preference items under section 57(a) for any partner;

(iv) Income of the partnership exempt from tax;

(v) Partnership liabilities (including determinations with respect to the amount of the liabilities, whether the liabilities are nonrecourse, and changes from the preceding taxable year); and

(vi) Other amounts determinable at the partnership level with respect to partnership assets, investments, transactions and operations necessary to enable the partnership or the partners to determine—

(A) The investment credit determined under section 46(a);

(B) Recapture under section 47 of the investment credit;

(C) Amounts at risk in any activity to which section 465 applies;

(D) The depletion allowance under section 613A with respect to oil and gas wells; and

(E) The application of section 751 (a) and (b);

(2) Guaranteed payments;

(3) Optional adjustments to the basis of partnership property pursuant to an election under section 754 (including necessary preliminary determinations, such as the determination of a transferee partner's basis in a partnership interest); and

(4) Items relating to the following transactions, to the extent that a determination of such items can be made